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Department of Water Resources

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**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHTS NOS. 36-  
15501, 36-02551, AND 36-07694

**MOTION FOR ORDER  
AUTHORIZING LIMITED  
DISCOVERY**

COMES NOW Rangen, Inc., through counsel, pursuant to Rule 521 of the Department's Rules of Procedure and moves for an order authorizing limited discovery in the above-entitled matter. Rangen requests that the Department disclose and produce all documents and other information relied upon or considered for each of the findings in the *Second Amended Order* issued by the Director in the above-entitled action related to the Department's ground water model and identify the employees and/or contractors that gathered or developed that information. Rangen further requests a minimum six month period following the requested disclosures for the parties to conduct discovery related to those disclosures and the basis for the Director's order.

Rule 521 provides:

No party before the agency is entitled to engage in discovery unless the party moves for an order authorizing discovery and the agency issues an order authorizing the requested discovery, or upon agreement of all parties to the discovery that discovery may be conducted. The presiding officer shall provide a schedule for discovery in the order authorizing discovery, but the order authorizing and scheduling discovery need not conform to the timetables of the Idaho Rules of Civil Procedure. . . .

IDAPA 37.01.01.521. Rule 520 provides various methods of discovery including depositions, production requests, written interrogatories, and requests for admission. IDAPA 37.01.01.520.

**A. Discovery**

“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Sweitzer v. Dean*, 118 Idaho 568, 573, 798 P.2d 27, 32 (1990). There can be no opportunity for a meaningful hearing in this matter without the opportunity to conduct the requested discovery. The Director consulted and relied upon substantial information that is not apparent from the Director’s order. There has never been a hearing in this matter. The parties have not yet presented evidence or argument. Nevertheless, the Director has issued a complex order that purports to provide precise quantifications of apparently complicated phenomena. That order is based upon a background of facts and opinions gathered and developed by the Director and the Department through its own employees and contractors. Rangen and the other parties to this matter are entitled to disclosures and a period of discovery regarding the background information that forms the basis for the Director’s *Second Amended Order*.

The Director’s *Second Amended Order* in the above-entitled matter relies substantially upon a ground water model developed by the Department.

On or about May 11, 2004, the Department and its contractors completed the development of a reformulated and recalibrated ground water model for the Eastern Snake Plain Aquifer (“ESPA”). This reformulated ground water model includes significant refinement of the calculated depletions to

springs discharging from the Snake River Canyon in the Thousand Springs area resulting from the diversion and use of ground water and apports the depletions among six adjacent groupings of spring complexes, or reaches, in the Thousand Springs area. The model provides calculated depletions to the reach containing the Curran Spring, from which Rangen receives surface water, resulting from the diversion and use of ground water for irrigation.

*Second Amended Order*, Finding of Fact 4. The Director relied upon the model because he found it provided “the best available science currently available to the Director and should be used to determine the extent of depletions to springs discharging in the Thousand Springs area resulting from the diversions and use of ground water.” *Second Amended Order*, Finding of Fact 6.

No meaningful hearing can be conducted until Rangen and the other parties to this matter are given a chance to discover and review the underlying assumptions, data, and processes including the ground water model that resulted in the Director’s order. Rangen requests that the Department and the Director disclose the information relied upon and consulted by the Director for the findings and conclusions in the *Second Amended Order* and identify the employees and contractors that assisted in the gathering and development of that information. Rangen further requests that the Director authorize discovery through any method specified in Rule 520 regarding the information disclosed. The information requested is a crucial first step in the discovery process that must precede any meaningful hearing in this case. The disclosures and discovery requested in this motion should take place before any other proceedings and not just at some point prior to the hearing.

#### **B. Scheduling**

On July 29, 2005, the Director issued a Notice of Status Conference scheduling a status conference in this matter for August 16, 2005. The notice provides that the parties shall:

- (1) identify the issues they anticipate raising at the hearing to be conducted in this matter;
- (2) present proposed prehearing schedules identifying time

limits to file and hear motions, complete any authorized discovery, simplify issues, identify witnesses, exchange exhibits, hold a final prehearing conference, and address other matters as appropriate; (3) identify dates and an estimated length of time for the hearing; (4) address the potential for utilizing evidence taken at hearing in multiple related proceedings; (5) address ways to avoid unnecessary proof and submission of cumulative evidence; and (6) such other matters as will expedite the disposition of the case.

Rangen set forth the issues that can be anticipated at this time in its request for a hearing filed in this matter. Rangen cannot anticipate the issues that may become apparent following the discovery that is requested by this motion. Only after the requested discovery has occurred will Rangen be in a position to identify those issues as requested in number one above. With regard to number two and three above, Rangen is not in a position to meaningfully determine an appropriate schedule or time limits until the requested discovery has been completed. Rangen is similarly unable to address the relationship between this and other matters as requested in numbers four and five without the requested discovery. The parties to this matter are entitled to a period of discovery directed to the Department, its employees, and its contractors to examine the basis for the *Second Amended Order*. Until the parties have had an opportunity to conduct that discovery, there can be no other meaningful proceedings in this matter.

Rangen respectfully requests that the Department disclose the information and authorize the discovery requested in this motion. Rangen further requests a minimum six-month period to conduct the requested discovery after which the issues raised in the *Notice of Status Conference* may be more meaningfully addressed.

DATED This 15<sup>th</sup> day of August, 2005.

MAY, SUDWEEKS & BROWNING, LLP

By

  
J. Justin May

Attorneys for Rangen, Inc.

## CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 15<sup>th</sup> day of August, 2005 he caused a true and correct copy of the forgoing document to be served upon the following by the indicated method:

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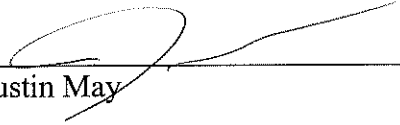
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